



# AIA<sup>®</sup> Document B101<sup>™</sup> – 2007

## Standard Form of Agreement Between Owner and Architect

AGREEMENT made as of the \_\_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_

BETWEEN the Architect's client identified as the Owner:

Thomas Jefferson University Hospitals, Inc.  
111 South 11<sup>th</sup> Street  
Philadelphia, Pennsylvania 19107-5098

and the Architect:

for the following Project:

The Owner and Architect agree as follows.

### ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

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### EXHIBIT A INITIAL INFORMATION

#### ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Article 1 and in optional Exhibit A, Initial Information:

Project Site:

Thomas Jefferson University Hospital

Philadelphia, Pennsylvania 19107

Owner Budget for Construction: Unknown at time of the Agreement

Owner's anticipated Procurement Method:

§ 1.1.1 The Owner's program for the Project:

§ 1.1.2 The Project's physical characteristics:

N/A

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§ 1.2 The Owner's anticipated dates for commencement of construction and Substantial Completion of the Work are set forth below:

.1 Commencement of construction date:

Not known at time of Agreement

.2 Substantial Completion date:

Not known at time of Agreement

*(Paragraph deleted)*

§ 1.1.3 The Owner's budget for the Cost of the Work, as defined in Section 6.1:

\$ \_\_\_\_\_

§ 1.1.4 INTENTIONALLY DELETED

§ 1.1.5 The Owner intends the following procurement or delivery method for the Project:

N/A

§ 1.1.6 Other Project Information"

(Identify special characteristics or needs of the Project not provided elsewhere, such as environmentally responsible design or historic preservation requirements.)

§ 1.1.7 PROJECT TEAM

§ 1.1.7.1 The Owner identifies the following representative in accordance with Section 5.3:

(List name, address and other information.)

Ronald Bowlan, Sr. Vice President, Facilities and Campus Planning

Tel: 215-503-4767

Email: [ron.bowlan@jefferson.edu](mailto:ron.bowlan@jefferson.edu)

Fax: 215-503-2436

Kim Dengler

Director, Facilities Design & Construction

Tel: 215-503-7715

Email: [kim.dengler@jefferson.edu](mailto:kim.dengler@jefferson.edu)

Fax: 215-503-2436

Thomas Jefferson University

Department of Facilities Design & Construction

130 South 9<sup>th</sup> Street

Suite # 2300

Philadelphia, Pennsylvania 19107

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§ 1.1.7.2 The persons or entities, in addition to the Owner's representative, who are required to review the Architect's submittals to the Owner are as follows:  
(List name, address and other information.)

§ 1.1.7.3 The Owner will retain the following consultants and contractors:  
(List discipline and, if known, identify them by name and address.)

Unknown at this time

§ 1.1.7.4 The Architect identifies the following representative in accordance with Section 2.3:  
(List name, address and other information.)

§ 1.1.7.5 The Architect will retain the consultants identified in Sections 1.1.7.6 and 1.1.7.7.  
(List discipline and, if known, identify them by name and address.)

§ 1.1.7.6 Consultants retained under Basic Services:

.1 Structural Engineer

.2 Mechanical Engineer:

.3 Electrical Engineer

.4 Construction cost Estimating

.5 Other (Please specify):

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- 1.
- 2.
- 3.

**§ 1.1.7.7** Consultants retained under Additional Services:

N/A

**§ 1.1.8** Other Initial Information on which the Agreement is based:  
(Provide other Initial Information.)

N/A

**ARTICLE 2 ARCHITECT'S RESPONSIBILITIES**

**§ 2.1** The Architect shall provide the professional services as set forth in this Agreement.

**§ 2.2** The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

**§ 2.3** The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project.

**§ 2.4** Except with the Owner's knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project. The Architect shall not engage any consultant, contractor or subcontractor without first obtaining the Owner's prior written consent, which consent shall not be unreasonably withheld. In the event that the Architect breaches this provision, the Architect shall indemnify, defend and hold Owner harmless from all costs and expenses (including reasonable attorneys' fees and court costs) incurred by Owner as a result of any liens placed on any property of Owner by such contractor or subcontractor

**§ 2.5 Architect's Insurance**

**Architect's Insurance** – Prior to the start of the Architect's services hereunder, the Architect shall procure and maintain in force during the term of the Agreement the following insurance written on an occurrence basis with insurance companies lawfully authorized to do business in Pennsylvania: workers' compensation insurance with statutory limits; employers' liability insurance in the amount of at least \$5,000,000.; business automobile liability insurance in the amount of a least \$2,000,000; and commercial general liability insurance, to include coverage for bodily injury and property damage liability, personal and advertising injury liability, products and completed operations, and contractual liability with minimum primary policy limits of \$1,000,000. per occurrence and a project specific annual aggregate of \$2,000,000. Architect will also maintain excess/umbrella commercial general liability insurance in minimum policy limits of \$500,000 per occurrence and \$5,000,000 in the annual aggregate. Architect will also maintain errors and omissions professional liability insurance with minimum limits of \$5,000,000 per occurrence and an annual aggregate of \$10,000,000 written on an occurrence or claims made basis. If the errors and omissions liability policy is written on a claim made basis, Architect agrees that upon termination of coverage,

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Architect shall procure and maintain in force a retroactive reporting policy (tail policy) for a minimum of ten (10) years following completion of the project. The errors and omissions policy referenced above shall not contain mold or pollution coverage exclusions. All insurance policies required to be carried by Architect shall be primary and non-contributory). As the first name insured, Architect shall be responsible for any deductibles on the, general liability policy. Policy deductibles shall not be greater than \$20,000.

Thomas Jefferson University Hospitals will be an additional named insured on the policy. The policies of insurance required hereunder shall contain a provision that the coverage afforded under the policies shall not be cancelled or allowed to expire until at least thirty (30) days' prior written notice has been given to the Owner. At or preceding execution of this Agreement, the Architect shall furnish the Owner with the following insurance documents; certificates of insurance evidencing the required coverage to certificate holder. Thomas Jefferson University a schedule of underlying coverage on the excess/umbrella policy; and an endorsement adding Thomas Jefferson University. as an additional named insured on the primary and excess general liability policy.

If Architect fails to obtain or maintain any insurance required by this Agreement, such failure shall constitute substantial failure to perform under Section 1,3,8,4 of this Agreement. In addition to an other remedies available to Owner due to such failure, Owner may, at Owner's option, purchase such coverage and deduct the expense from any fees due Architect.

*(Paragraphs deleted)*

**Owner's Insurance.** The Owner shall obtain and maintain all risk property insurance upon the Project for the full replacement cost at the time of loss.

### **ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES**

§ 3.1 The Architect's Basic Services consist of those described in Article 3 and include usual and customary structural, mechanical, and electrical engineering services. Services not set forth in this Article 3 are Additional Services.

§ 3.1.1 The Architect shall manage the Architect's services, consult with the Owner, research applicable design criteria, attend Project meetings, communicate with members of the Project team and report progress to the Owner.

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner and the Owner's consultants. The Architect shall be entitled to rely on the accuracy and completeness of services and information furnished by the Owner and the Owner's consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission or inconsistency in such services or information.

§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services. The schedule initially shall include anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary as the Project proceeds until the commencement of construction.

§ 3.1.4 The Architect shall not be responsible for an Owner's directive or substitution made without the Architect's approval.

§ 3.1.5 The Architect shall, at appropriate times, contact the governmental authorities required to approve the Construction Documents and the entities providing utility services to the Project. In designing the Project, the Architect shall respond to applicable design requirements imposed by such governmental authorities and by such entities providing utility services.

§ 3.1.6 The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

## § 3.2 SCHEMATIC DESIGN PHASE SERVICES

§ 3.2.1 The Architect shall review the program and other information furnished by the Owner, and shall review laws, codes, and regulations applicable to the Architect's services.

§ 3.2.2 The Architect shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, and the proposed procurement or delivery method and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Architect shall notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

§ 3.2.3 The Architect shall present its preliminary evaluation to the Owner and shall discuss with the Owner alternative approaches to design and construction of the Project, including the feasibility of incorporating environmentally responsible design approaches. The Architect shall reach an understanding with the Owner regarding the requirements of the Project.

§ 3.2.4 Based on the Project's requirements agreed upon with the Owner, the Architect shall prepare and present for the Owner's approval a preliminary design illustrating the scale and relationship of the Project components.

§ 3.2.5 Based on the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for the Owner's approval. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital modeling. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

§ 3.2.5.1 The Architect shall consider environmentally responsible design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain other environmentally responsible design services under Article 4.

§ 3.2.5.2 The Architect shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics in developing a design for the Project that is consistent with the Owner's program, schedule and budget for the Cost of the Work.

§ 3.2.6 The Architect shall submit to the Owner an estimate of the Cost of the Work prepared in accordance with Section 6.3.

§ 3.2.7 The Architect shall submit the Schematic Design Documents to the Owner, and request the Owner's approval.

## § 3.3 DESIGN DEVELOPMENT PHASE SERVICES

§ 3.3.1 Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Design Development Documents for the Owner's approval. The Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and such other elements as may be appropriate. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish in general their quality levels.

§ 3.3.2 The Architect shall update the estimate of the Cost of the Work.

§ 3.3.3 The Architect shall submit the Design Development documents to the Owner and request the Owner's approval.

## § 3.4 CONSTRUCTION DOCUMENTS PHASE SERVICES

§ 3.4.1 Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Owner's approval. The Construction Documents shall illustrate and describe the



further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels of materials and systems and other requirements for the construction of the Work. The Owner and Architect acknowledge that in order to construct the Work the Contractor will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.6.4.

§ 3.4.2 The Architect shall incorporate into the Construction Documents the design requirements of governmental authorities having jurisdiction over the Project. The Architect will assist the Owner in connection with the Owner's responsibility for filing documents required for approval of Landlord and governmental authorities having jurisdiction over the Project as applicable. In addition to providing the drawings, documents and plans described in Sections 3.2, 3.3 and 3.4 of this Agreement, the Architect will provide as a part of such drawings, documents and plans, or in a separate form, such plans as may be necessary to obtain all required governmental approvals from governmental authorities having jurisdiction over the Project.

§ 3.4.3 During the development of the Construction Documents, the Architect shall assist the Owner in the development and preparation of (1) bidding and procurement information that describes the time, place and conditions of bidding, including bidding or proposal forms; (2) the form of agreement between the Owner and Contractor; and (3) the Conditions of the Contract for Construction (General, Supplementary and other Conditions). The Architect shall also compile a project manual that includes the Conditions of the Contract for Construction and Specifications and may include bidding requirements and sample forms.

§ 3.4.4 The Architect shall update the estimate for the Cost of the Work..

§ 3.4.5 The Architect shall submit the Construction Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, take any action required under Section 6.5, and request the Owner's approval.

## § 3.5 BIDDING OR NEGOTIATION PHASE SERVICES

### § 3.5.1 GENERAL

The Architect shall assist the Owner in establishing a list of prospective contractors. Following the Owner's approval of the Construction Documents, the Architect shall assist the Owner in (1) obtaining either competitive bids or negotiated proposals; (2) confirming responsiveness of bids or proposals; (3) determining the successful bid or proposal, if any; and, (4) awarding and preparing contracts for construction. The Architect will assist the Owner in bid validation or proposal evaluation determination of the successful bid or proposal, if any; however, the final determination or acceptance shall be made by Owner in its sole discretion.

### § 3.5.2 COMPETITIVE BIDDING

§ 3.5.2.1 Bidding Documents shall consist of bidding requirements and proposed Contract Documents.

§ 3.5.2.2 The Architect shall assist the Owner in bidding the Project by

- .1 procuring the reproduction of Bidding Documents for distribution to prospective bidders;
- .2 distributing the Bidding Documents to prospective bidders, requesting their return upon completion of the bidding process, and maintaining a log of distribution and retrieval and of the amounts of deposits, if any, received from and returned to prospective bidders;
- .3 organizing and conducting a pre-bid conference for prospective bidders;
- .4 preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to all prospective bidders in the form of addenda; and
- .5 organizing and conducting the opening of the bids, and subsequently documenting and distributing the bidding results, as directed by the Owner.

§ 3.5.2.3 The Architect shall consider requests for substitutions, if the Bidding Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective bidders.

### § 3.5.3 NEGOTIATED PROPOSALS

§ 3.5.3.1 Proposal Documents shall consist of proposal requirements and proposed Contract Documents.

§ 3.5.3.2 The Architect shall assist the Owner in obtaining proposals by

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- .1 procuring the reproduction of Proposal Documents for distribution to prospective contractors,
- .2 organizing and participating in selection interviews with prospective contractors; and
- .3 participating in negotiations with prospective contractors, and subsequently preparing a summary report of the negotiation results, as directed by the Owner.

§ 3.5.3.3 The Architect shall consider requests for substitutions, if the Proposal Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective contractors.

## § 3.6 CONSTRUCTION PHASE SERVICES

### § 3.6.1 GENERAL

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A201™–2007, General Conditions of the Contract for Construction, as amended by Owner. . If the Owner and Contractor modify AIA Document A201–2007, those modifications shall not affect the Architect’s services under this Agreement unless the Owner and the Architect amend this Agreement.

§ 3.6.1.2 The Architect shall advise and consult with the Owner during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Contractor’s failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect’s negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or of any other persons or entities performing portions of the Work.

§ 3.6.1.3 Subject to Section 4.3, the Architect’s responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates on the date the Architect issues the final Certificate for Payment.

### § 3.6.2 EVALUATIONS OF THE WORK

§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of contractors’ operations, or as otherwise agreed by the Owner and the Architect in Section 4.2.3, (1) to become familiar with the progress and quality of the portion of the Work completed in the Project, and (2) to, determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work.

§ 3.6.2.2 The Architect has the authority and responsibility to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees or other persons or entities performing portions of the Work.

### § 3.6.2.3 INTENTIONALLY DELETED.

§ 3.6.2.4 Interpretations and decisions of the Architect shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by the Contractor. The Architect, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith. .The Owner’s decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

§ 3.6.2.5 The Owner shall render initial decision of Claims from the Contractor as provided in the Contract Documents.

### § 3.6.3 CERTIFICATES FOR PAYMENT TO CONTRACTOR

§ 3.6.3.1 As requested by the Owner, the Architect shall review and certify the amounts due the Contractor and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Contractor's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the equality of the Work is in accordance with the Contract Documents. The foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the Contract Documents prior to completion, and (4) to specific qualifications expressed by the Architect.

### § 3.6.3.2 INTENTIONALLY DELETED

§ 3.6.3.3 The Architect shall maintain a record of the Applications and Certificates for Payment..

### § 3.6.4 SUBMITTALS

§ 3.6.4.1 The Architect shall review the Contractor's submittal schedule and shall not unreasonably delay or withhold approval. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review.

§ 3.6.4.2 In accordance with the approved submittal schedule, the Architect shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 3.6.4.3 If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review shop drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor that bear such professional's seal and signature when submitted to the Architect. The Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals.

§ 3.6.4.4 Subject to the provisions of Section 4.3, the Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth in the Contract Documents the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to requests for information.

§ 3.6.4.5 The Architect shall maintain a record of submittals and copies of submittals supplied by the Contractor in accordance with the requirements of the Contract Documents.

### § 3.6.5 CHANGES IN THE WORK

§ 3.6.5.1 The Architect may authorize minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Subject to the

provisions of Section 4.3, the Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

§ 3.6.5.2 The Architect shall maintain records relative to changes in the Work.

**§ 3.6.6 PROJECT COMPLETION**

§ 3.6.6.1 The Architect shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion; receive from the Contractor and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and assembled by the Contractor; and issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents.

§ 3.6.6.2 The Architect's inspections shall be conducted with the Owner to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected.

§ 3.6.6.3 When the Work is found to be substantially complete, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

§ 3.6.6.4 The Architect shall forward to the Owner the following information received from the Contractor: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Contractor under the Contract Documents.

§ 3.6.6.5 Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance.

**ARTICLE 4 ADDITIONAL SERVICES**

§ 4.1 Additional Services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Additional Services only if specifically designated in the table below as the Architect's responsibility, and the Owner shall compensate the Architect as provided in Section 11.2.

*(Designate the Additional Services the Architect shall provide in the second column of the table below. In the third column indicate whether the service description is located in Section 4.2 or in an attached exhibit. If in an exhibit, identify the exhibit.)*

| <b>Additional Services</b>                         | <b>Responsibility<br/>(Architect, Owner<br/>or<br/>Not Provided)</b> | <b>Location of Service Description<br/>(Section 4.2 below or in an exhibit<br/>attached to this document and<br/>identified below)</b> |
|--|--|--|
| § 4.1.1 Programming                                |  |  |
| § 4.1.2 Multiple preliminary designs               |  |  |
| § 4.1.3 Measured drawings                          |  |  |
| § 4.1.4 Existing facilities surveys                |  |  |
| § 4.1.5 Site Evaluation and Planning (B203™-2007)  |  |  |
| § 4.1.6 Building information modeling              |  |  |
| § 4.1.7 Civil engineering                          |  |  |
| § 4.1.8 Landscape design                           |  |  |
| § 4.1.9 Architectural Interior Design (B252™-2007) |  |  |
| § 4.1.10 Value Analysis (B204™-2007)               |  |  |
| § 4.1.11 Detailed cost estimating                  |  |  |
| § 4.1.12 On-site project representation            |  |  |
| § 4.1.13 Conformed construction documents          |  |  |
| § 4.1.14 As-Designed Record drawings               |  |  |
| § 4.1.15 As-Constructed Record drawings            |  |  |

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| § 4.1.16 | Post occupancy evaluation   |  |  |
| § 4.1.17 | Facility Support Services (B210 <sup>TM</sup> -2007)                    |  |  |
| § 4.1.18 | Tenant-related services   |  |  |
| § 4.1.19 | Coordination of Owner's consultants                                     |  |  |
| § 4.1.20 | Telecommunications/data design  |  |  |
| § 4.1.21 | Security Evaluation and Planning (B206 <sup>TM</sup> -2007)             |  |  |
| § 4.1.22 | Commissioning (B211 <sup>TM</sup> -2007)                                |  |  |
| § 4.1.23 | Extensive environmentally responsible design                            |  |  |
| § 4.1.24 | LEED <sup>®</sup> Certification (B214 <sup>TM</sup> -2007)              |  |  |
| § 4.1.25 | Fast-track design services  |  |  |
| § 4.1.26 | Historic Preservation (B205 <sup>TM</sup> -2007)                        |  |  |
| § 4.1.27 | Furniture, Furnishings, and Equipment Design (B253 <sup>TM</sup> -2007) |  |  |
|          |   |  |  |

§ 4.2 Insert a description of each Additional Service designated in Section 4.1 as the Architect's responsibility, if not further described in an exhibit attached to this document.

§ 4.3 Additional Services may be provided after execution of this Agreement, without invalidating the Agreement, if mutually agreed in writing. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.3 shall entitle the Architect to compensation pursuant to Article 11 and an appropriate adjustment in the Architect's schedule.

§ 4.3.1 Upon recognizing the need to perform the following Additional Services, the Architect shall notify the Owner, in writing with reasonable promptness and explain the facts and circumstances giving rise to the proposed Additional Services. The Architect shall not proceed to provide the following services until the Architect receives the Owner's written authorization ("material" being defined to mean, in general, resulting in more than eight (8) hours of additional time by the Architect:

- .1 Services necessitated by a material change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project as defined in this Agreement and the Contract Documents including, but not limited to, size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method;
- .2 Services necessitated by the Owner's request (after the date of this Agreement) for extensive environmentally responsible design alternatives, such as unique system designs, in-depth material research, energy modeling, or LEED<sup>®</sup> certification;
- .3 Changing or editing previously prepared Instruments of Service necessitated by the enactment or revision of codes, laws or regulations or official interpretations after the date of this Agreement;
- .4 Services necessitated by material failure of performance of decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;
- .5 **INTENTIONALLY DELETED**
- .6 **INTENTIONALLY DELETED;**
- .7 Preparation for, and attendance at, a public presentation, meeting or hearing;
- .8 Preparation for, and attendance at a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;
- .9 **INTENTIONALLY DELETED**
- .10 Consultation concerning replacement of Work resulting from fire or other cause during construction; (unless caused by Architect)

§ 4.3.2

*(Paragraphs deleted)*

**INTENTIONALLY DELETED**

Init.

§ 4.3.3

*(Paragraphs deleted)*

**INTENTIONALLY DELETED**

§ 4.3.4 **INTENTIONALLY DELETED**

**ARTICLE 5 OWNER'S RESPONSIBILITIES**

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project Within a reasonable time after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of or enforce lien rights.

§ 5.2 The Owner shall establish and may periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect. The Owner and the Architect shall thereafter discuss whether or not to make a corresponding change in the Project's scope and/or quality.

§ 5.3 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

§ 5.4 **INTENTIONALLY DELETED.**

*(Paragraph deleted)*

§ 5.5 **INTENTIONALLY DELETED**

§ 5.6 The Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated in this Agreement, or authorize the Architect to furnish them as an Additional Service, when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants maintain professional liability insurance as appropriate to the services provided.

§ 5.7 Unless otherwise provided in this Agreement, the Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials. Architect, to the extent customary and reasonable to do so, shall advise Owner, if any such tests, inspections or reports are required.

§ 5.8 **INTENTIONALLY DELETED**

§ 5.9 The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service.

§ 5.10 **INTENTIONALLY DELETED**

§ 5.11 **INTENTIONALLY DELETED**

§ 5.12 The Owner shall provide the Architect access to the Project site prior to commencement of the Work and shall obligate the Contractor to provide the Architect access to the Work wherever it is in preparation or progress.

**ARTICLE 6 COST OF THE WORK**

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include contractors' general conditions costs,



overhead and profit. The Cost of the Work does not include the compensation of the Architect, the costs of the land, rights-of-way, financing, and contingencies for changes in the Work or other costs that are the responsibility of the Owner.

§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information, and may be adjusted throughout the Project as required under Sections 5.2, 6.4 and 6.5. Evaluations of the Owner's budget for the Cost of the Work, the preliminary estimate of the Cost of the Work and updated estimates of the Cost of the Work prepared by the Architect, represent the Architect's judgment as a design professional. It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials or equipment; the Contractor's methods of determining bid prices; or competitive bidding, market or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's budget for the Cost of the Work or from any estimate of the Cost of the Work or evaluation prepared or agreed to by the Architect.

§ 6.3 In preparing estimates of the Cost of the Work, the Architect shall be permitted to include contingencies for design, bidding and price escalation; to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents; to make reasonable adjustments in the program and scope of the Project; and to include in the Contract Documents alternates bids as may be necessary to adjust the estimate Cost of the Work to meet the Owner's budget for the Cost of the Work.

#### § 6.4 INTENTIONALLY DELETED.

§ 6.5 If at any time the Architect's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect shall make appropriate recommendations to the Owner to adjust the Project's size, scope, quality, budget, or other aspects affecting the Cost of the Work, and the Owner shall make the adjustments, if any, that the Owner decides, in its discretion, are appropriate, and the Architect shall document such adjustments.

§ 6.6 If the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services is exceeded by the lowest bona fide bid or negotiated proposal, the Owner may take any of the following actions in the sole discretion;

- .1 give written approval of an increase in the budget for the Cost of the Work;
- .2 authorize rebidding or renegotiating of the Project within a reasonable time;
- .3 terminate in accordance with Section 9.5;
- .4 in consultation with the Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or
- .5 implement any other mutually acceptable alternative.

§ 6.7 If the Owner chooses to proceed under Section 6.6.4, the Architect, shall be compensated on a T & M basis, to modify the Construction Documents as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services, or the budget as adjusted under Section 6.6.1. The Architect's modification of the Construction Documents shall be the limit of the Architect's responsibility under this Article 6.

### ARTICLE 7 COPYRIGHTS AND LICENSES

*(Paragraphs deleted)*

#### ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 The Architect and the Owner warrant that in transmitting the Instruments of Services, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use of the Project. Owner acknowledges that the Architect's Drawings, specifications and other documents, including those in electronic form, prepared by the Architect and the Architect's consultants are instruments of Service for use solely with respect to this project

•  
§ 7.2 The Owner acknowledges that the Architect and the Architect's consultants shall be deemed the authors of their respective Instruments of Services, including the Drawings and Specifications, and shall retain the copyrights therefor. Submission or distribution of Instruments of Service to meet official regulatory requirement or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect or the Architect's consultants. Nevertheless, the copies of the final Construction Documents prepared under

this Agreement provided to Owner shall become the property of the Owner upon completion of the services and payment in full of all monies due to Architect or at such time as Architect is in default under this Agreement. Construction Documents shall include electronic specifications, as-builts from Owner supplied markup, AUTOCAD files, and an electronic copy of all submittals and sketches. The Owner may, at its sole risk, reuse or make modifications to the Construction Documents without the prior written consent of the Architect or the Architect's consultants. The Owner shall have the right to use Instruments of Service to prepare space plans, which shall be the sole property of the Owner.

**§ 7.3** Upon execution of this Agreement, the Architect grants to the Owner a nonexclusive license to use and reproduce the Architect's Instruments of Service solely for purposes of constructing, using, maintaining, altering and adding to the Project, and as further provided in the Article. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with the Agreement. The license granted under this Article permits the Owner to authorize the Contractors, Subcontractors, Sub-contractors and material or equipment suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service appropriate to and for use in performing services or construction for the Project. Submission of distribution of Instruments of Service to meet official regulatory requirements or for similar purpose in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.2 shall terminate as to that portion (if any) of the Instruments of Service for which Owner has not paid Architect, unless such termination was due to Architect's default under this Agreement, at which point the Instrument of Service shall belong to Owner. Upon such termination (unless such termination was due to Architect's default), the Owner shall refrain from making further reproductions of Instruments of Service belonging to the Architect and shall return to the Architect within seven days of termination all originals and reproductions in the Owner's possession or control for which ownership has not passed to the Owner. The provisions of the Section 7.3 shall not apply to any portion of the Instruments of Service for which title has passed to Owner by reason of Owner's payment of sums due for such portion of the Instruments of Service. If and upon the date the Architect is in default of the Agreement, the foregoing license shall be deemed terminated and replaced by a second, nonexclusive license permitting the Owner to authorize other similarly credentialed design professionals to reproduce and, where permitted by law, to make changes, corrections or additions to the Instruments of Service solely for purposes of completing, using and maintaining the Project, including but not limited to future renovations of the Project.

**§ 7.3.1**

In the event the Owner uses the instrument of Service without retaining the author of the Instruments of Services, the Owner releases the Architect and the Architect's consultants(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including reasonable costs of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1, except to the extent that the use is performed by or for the Architect. The terms of this Section 7.3.1 shall not apply in the Owner rightfully terminates this Agreement for cause under Section 9.4.

**§ 7.4** Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect, not to be unreasonably withheld, conditioned or delayed.

**ARTICLE 8 CLAIMS AND DISPUTES**

**§ 8.1 GENERAL INTENTIONALLY DELETED**

*(Paragraphs deleted)*

Init.



## § 8.2 MEDIATION

### § 8.2.1 INTENTIONALLY DELETED

*(Paragraphs deleted)*

§ 8.2.4 The method of binding dispute resolution shall be the following:

*(Check the appropriate box. If the Owner and Architect do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.)*

- Arbitration pursuant to Section 8.3 of this Agreement
- Litigation in a court of competent jurisdiction
- Other (See Below)

## § 8.3 DISPUTE MITIGATION AND RESOLUTION

**1. WORK CONTINUANCE AND PAYMENT.** Unless otherwise agreed in writing, Architect shall continue the Work and maintain the Schedule of the Work during any dispute mitigation or resolution discussions or proceedings. If Architect continues to perform, Owner shall continue to make payments in accordance with this Agreement.

**2. DIRECT DISCUSSIONS.** If the Parties cannot reach resolution on a matter relating to or arising out of this Agreement, the Parties shall endeavor to reach resolution through good faith direct discussions between the Parties' representatives, who shall possess the necessary authority to resolve such matter and who shall record the date of first discussions. If the Parties' representatives are not able to resolve such matter within seven (7) Days of the date of first discussion, the Parties' representatives shall immediately inform senior executives of the Parties in writing that resolution was not effected. Upon receipt of such notice, senior executives of the Parties shall meet within seven (7) Days to endeavor to reach resolution. If the dispute remains unresolved after fourteen (14) Days from the date of first discussions, the Parties shall submit such matter to the dispute mitigation and dispute resolution procedures selected herein.

**3. BINDING DISPUTE RESOLUTION.** If the matter remains unresolved following the discussions referenced in Subparagraph 2 above, the parties shall refer the matter to binding arbitration using the current Construction Industry Arbitration Rules of the American Arbitration Association ("AAA Rules"), except as revised below:

**a.** The venue of the binding dispute resolution procedure shall be the location of the Project, unless the parties agree otherwise.

**b.** All parties necessary to resolve the matter shall be parties to the same dispute resolution procedure. All contracts with Contractors, Subcontractors, Material Suppliers, designers and consultants shall incorporate by reference the binding dispute resolution provisions in this Agreement.

**c.** There shall be a single arbitrator, selected in accordance with the AAA Rules, and the costs shall be shared equally by the parties.

**d.** All documents relating to the dispute shall be voluntarily exchanged at the initial scheduling conference with the case manager of AAA.

Init.

- e. There shall be no written discovery or motions, except by further agreement of the parties.
- f. There shall be a maximum of three depositions on each side, and a limit of 6, for any proceeding.
- g. Arbitration hearings shall be conducted on an expedited basis. The parties are invited to submit direct testimony by deposition transcript or affidavit. Arbitration hearing time shall be limited to 10 hours for each side of the dispute, except by further agreement of the parties.
- h. The arbitrator shall be required to issue a report of award within 30 days of the closing of the arbitration hearing, and shall explain the reasons for the result.
- i. The award of the arbitrator shall be unappealable and final for all purposes.

**4. COSTS.** Each Party shall bear its own costs and fees incurred in connection with the binding arbitration procedures including, without limitation, the fees and costs of its own attorneys and experts except that the cost of the arbitrators and any other costs relating to the arbitration benefiting both Parties shall be split equally between the Parties.

*(Paragraphs deleted)*

#### **ARTICLE 9 TERMINATION OR SUSPENSION**

**§ 9.1** If the Owner fails to make payments to the Architect in accordance with this Agreement, (unless such payments are being disputed in good faith by the Owner pursuant to a written notice to the Architect from the Owner issued within thirty (30) days of Architect's submission of an invoice for such payments) after thirty (30) days' written notice from the Architect, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give fourteen (14) days' written notice to the Owner before suspending services. In the event of a proper suspension of services, and provide further that the Architect is not in material default under the terms of this Agreement or any amendment thereto, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Architect shall be paid all sums due prior to suspension and any reasonable expenses incurred in the interruption and resumption of the Architect's services. The Architect's time schedule for the remaining services and the time schedules shall be equitably adjusted.

**§ 9.2** If the Owner suspends the Project, for more than thirty (30) consecutive days, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, (unless such interruption was due to the Architect's default under this Agreement., the Architect shall be compensated for reasonable expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

**§ 9.3** If the Owner suspends the Project for more than 90 days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than seven days' written notice.

**§ 9.4** Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

**§ 9.5** The Owner may terminate this Agreement upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.

**§ 9.6** In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due plus an amount for the Architect's anticipated profit on the value of the contracted services for the phase of the Work terminated and not performed by the Architect, as mutually agreed to by the parties

**§ 9.7 INTENTIONALLY DELETED.**

**§ 9.8** The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7 and Section 11.5.

Init.

## ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the Commonwealth of Pennsylvania.

§ 10.2 Unless otherwise defined herein, terms in this Agreement shall have the same meaning as those in AIA Document A201–2007, General Conditions of the Contract for Construction, as amended by Owner, which shall include by reference the terms of the Thomas Jefferson University Project Manual, dated September 1, 2000, last revised November, 2003 (except that this Agreement conflicts with any term or condition therein).

§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement.

§ 10.4 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. If the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender, the Architect shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Architect for review at least 14 days prior to execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of this Agreement.

§ 10.5 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Architect.

§ 10.6 Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

§ 10.7 The Architect shall not have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials without the Owner's prior written consent which may be withheld in Owner's sole discretion. In no event shall Architect's materials include the Owner's confidential or proprietary information.

§ 10.8 Architect agrees to keep confidential and not to disclose to any person of entity, except to Architect's employees, contractors, material suppliers, consultants and subcontractors (an only to the extent necessary to perform services or construction or provide materials solely and exclusively for the Project) and of Owner's confidential or proprietary information, know-how, discoveries, projection methods, and the like that may be disclosed to Architect or its consultants or which Architect may acquire in connection with the Work, When either party receives information specifically designated by the other party as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except to (1) its employees, (2) those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project, or (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information, each party shall promptly notify the other party to permit that party's legal objection.

## ARTICLE 11 COMPENSATION

§ 11.1 For the Architect's Basic Services described under Article 3, the Owner shall compensate the Architect as follows:

*(Paragraph deleted)*

§ 11.2 INTENTIONALLY DELETED

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.3, the Owner shall compensate the Architect as follows:

Init.

(Insert amount of, or basis for, compensation.)

Lump Sum or not to exceed based on time & hourly rates

§ 11.4 Compensation for Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus <<\_\_>> percent (<<\_\_>>), or as otherwise stated below .

§ 11.5 Where compensation for Basic Services is based on a stipulated sum or percentage of the Cost of the Work, the compensation for each phase of services shall be as follows:

|                              |           |   |
|------------------------------|-----------|---|
| Schematic Design Phase       | percent ( | ) |
| Design Development Phase     | percent ( | ) |
| Construction Documents Phase | percent ( | ) |
| Bidding or Negotiation Phase | percent ( | ) |
| Construction Phase           | percent ( | ) |
| <hr/>                        |           |   |
| Total Basic Compensation     | percent ( | ) |

§ 11.6 INTENTIONALLY DELETED.

§ 11.7 The hourly billing rates for services of the Architect and the Architect's consultants, if any, are set forth below. The rates shall be adjusted in accordance with the Architect's and Architect's consultants' normal review practices. (If applicable, attach an exhibit of hourly billing rates or insert them below.)

| Employee or Category | Rate |
|----------------------|------|
|----------------------|------|

#### § 11.8 COMPENSATION FOR REIMBURSABLE EXPENSES

§ 11.8.1 Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:

- .1 Transportation and authorized out-of-town travel and subsistence when previously authorized by Owner;
- .2 Long distance services, dedicated data and communication services, teleconferences, Project Web sites, and extranets;
- .3 Fees paid for securing approval of authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, standard form documents;
- .5 Postage, handling and delivery;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .7 Renderings, models, mock-ups, professional photography, and presentation materials requested by the Owner;
- .8 Architect's Consultant's expense of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits if the Owner requests such insurance in excess of that normally carried by the Architect's consultants;
- .9 **INTENTIONALLY DELETED;**
- .10 Site office expenses; and
- .11 Other similar Project-related expenditures.

The parties agree in advance that in no event shall Reimbursable Expenses exceed **\$1,600, (One Thousand, Six Hundred Dollars)** without advance electronic or written approval of Owner.

Init.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants.

§ 11.9

*(Paragraphs deleted)*

**INTENTIONALLY DELETED**

§ 11.10 PAYMENTS TO THE ARCHITECT

§ 11.10.1 INTENTIONALLY DELETED

§ 11.10.2 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable within forty-five (45) days of presentation of the Architect's invoice together with all supporting back-up materials as may be reasonably requested by Owner. The Owner shall notify the Architect of disputed amounts within thirty (30) days of the receipt of Architect's invoice. Undisputed amounts unpaid Ninety ( 90 ) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.  
*(Insert rate of monthly or annual interest agreed upon.)*

6 % annum

§ 11.10.3 INTENTIONALLY DELETED

§ 11.10.4 Records of Reimbursable Expenses, expenses pertaining to Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

*(Paragraphs deleted)*

§ 11.10.4.2 Simultaneously with the making of each payment to Architect under this Agreement, Architect will sign a release form approved by Owner waiving Architect's right to file any mechanic's lien, claim, or notice of its intention to file a mechanic's lien with respect to Work covered by such payment.

Architect agrees to execute such documents as are reasonably required by Owner to waive and relinquish Architect's right to file a mechanic's lien, claim, or notice of its intention to file a mechanic's lien in accordance with the laws of the Commonwealth of Pennsylvania.

If at any time there shall be evidence of any mechanic's lien having been filed by or through Architect or its consultants for which, if established. Owner or any party having interest in the Property or any interest therein, might be made liable, Owner, in addition to all rights it has under applicable laws to remove such lien, shall have the right to retain out of any payments then due, or thereafter becoming due, an amount sufficient to indemnify Owner for any such mechanic's lien until the same shall have been effectively terminated and discharged or bonded, as hereinafter set forth. Architect shall within ten (10) days of notice of such lien, cause to be discharged and terminated any lien filed by any of its consultant, material men, suppliers, or laborers, or shall bond against the same by a bond satisfactory to Owner.

**§ 12.1 NON-DISCRIMINATION/SEXUAL HARASSMENT CLAUSE**

During the term of the Agreement, Contractor agrees as follows:

§ 12.1.1 In the hiring of any employee(s) for the manufacture of supplies, performance of work, or any other activity required under the contract or any subcontract, the Contractor, Subcontractor, or any person acting on behalf of the Contractor or Subcontractor shall not by reason of gender, race, creed, or color, discriminate against any citizen of the Commonwealth who is notified and available to perform the work to which the employment relates.



§ 12.1.2 Neither the Contractor nor any Subcontractor nor any person on their behalf shall in any manner discriminate against or intimidate any employee involved in the manufacture or supplies, the performance of work, or any other activity required under the contract on account of gender, race, creed, or color.

§ 12.1.3 Contractors and Subcontractors shall establish and maintain a written sexual harassment policy and shall inform their employees of this policy. The policy must contain a notice that sexual harassment will not be tolerated and employees who practice it will be disciplined.

§ 12.1.4 Contractors shall not discriminate by reason of gender, race, creed, or color against an Subcontractor or Supplier who is qualified to perform the work to which the contracts related.

§ 12.1.5 The Contractor or each Subcontractor shall furnish all necessary employment documents and records, and to permit access to their books, records, and accounts by the Contracting Agency and the Bureau of Contract Administration and Business Development, for purpose of investigation, to ascertain compliance with provisions of the Nondiscrimination/Sexual Harassment Clause. If the Contractor or any Subcontractor does not possess documents or records reflecting the necessary information requested, the Contractor or Subcontractor shall furnish such information or reports forms supplied by the Contracting Agency or the Bureau of Contract Administration Business Development.

§ 12.1.6 The Contractor shall include the provisions of this Nondiscrimination/Sexual Harassment Clause in every Subcontract so that such provisions will be binding upon each Subcontractor.

§ 12.1.7 The Commonwealth may cancel or terminate the contract and all money due or to become due under the contract may be forfeited for a violation of the terms and conditions of this Nondiscrimination/Sexual Harassment Clause. In additions, the Agency may proceed with debarment or suspension and may place the Contract in the Contractor Responsibility files.

## § 12.2 LABOR RELATIONS

§ 12.2.1 Architect shall furnish labor that will work in "Harmony" with all Other elements of labor employed o the Project and at the Worksite, whether pursuant to this Agreement of some other arrangement. "Harmony," as used in this Agreement, means the provision of labor that will not, either directly or indirectly, cause or give rise to any work disruptions, slow downs, picketing, stoppages, or any violence or harm to or directed at any person or property while performing any work, or activities incidental thereto at the Project or at the Worksite.

§ 12.2.2 Architect will require every subcontractor and consultant to provide labor that will work in Harmony with all other elements of labor employed on the Project and at the Worksite, whether pursuant to this Agreement or some other arrangement, will include the commitments set forth in this provision in every subcontract and consultancy, and will require its subcontractors and consultants to include such commitments in its subcontracts, and sub-subcontracts, respectively, for any portion of the work under this Agreement.

§ 12.2.3 The commitments stated in this Paragraph are a material element of this Agreement. Failure by Architect or any of its subcontractors, consultants, or sub-subcontractors to comply with these commitments shall be a material breach of this Agreement may subject Architect to liability for all costs of expenses suffered by Owner, including attorneys' fees and costs and all other costs arising out of any dispute resolution proceeding incurred to resolve the breach or to enforce this commitment.

## ARTICLE 13 SCOPE OF THE AGREEMENT

§ 13.1 This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Architect.

§ 13.2 This Agreement is comprised of the following documents listed below:

- .1 AIA Document B101™–2007, Standard Form Agreement Between Owner and Architect
- .2 AIA Document E201™–2007, Digital Data Protocol Exhibit, if completed, or the following:

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User Notes:

(1464421699)

- .3 Other documents:  
*(List other documents, if any, including Exhibit A, Initial Information, and additional scopes of service, if any, forming part of the Agreement.)*

C

This Agreement entered into as of the day and year first written above.

**OWNER**

**ARCHITECT**

\_\_\_\_\_  
*(Signature)*

David P. McQuaid, FACHE  
President  
Thomas Jefferson University Hospitals, Inc.

\_\_\_\_\_  
*(Printed name and title)*

\_\_\_\_\_  
*(Signature)*

\_\_\_\_\_  
*(Printed name and title)*

Init.

User Notes:

(1464421699)



# **Additions and Deletions Report for** **AIA<sup>®</sup> Document B101<sup>™</sup> – 2007**

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

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## **PAGE 1**

~~(In words, indicate day, month and year.)~~

...

~~(Name, legal status, address and other information)~~

Thomas Jefferson University Hospitals, Inc.  
111 South 11<sup>th</sup> Street  
Philadelphia, Pennsylvania 19107-5098

...

~~(Name, legal status, address and other information)~~

...

~~(Name, location and detailed description)~~

## **PAGE 2**

~~(Complete Exhibit A, Initial Information, and incorporate it into the Agreement at Section 13.2, or state below Initial Information such as details of the Project's site and program, Owner's contractors and consultants, Architect's consultants, Owner's budget for the Cost of the Work, authorized representatives, anticipated procurement method, and other information relevant to the Project.)~~

Project Site:

Thomas Jefferson University Hospital

Philadelphia, Pennsylvania 19107

Owner Budget for Construction: Unknown at time of the Agreement

Owner's anticipated Procurement Method:

### **§ 1.1.1 The Owner's program for the Project:**

### **§ 1.1.2 The Project's physical characteristics:**

N/A

**PAGE 3**

Not known at time of Agreement

...

Not known at time of Agreement

~~§ 1.3 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the schedule, the Architect's services and the Architect's compensation.~~

**§ 1.1.3 The Owner's budget for the Cost of the Work, as defined in Section 6.1:**

\$ \_\_\_\_\_

**§ 1.1.4 INTENTIONALLY DELETED**

**§ 1.1.5 The Owner intends the following procurement or delivery method for the Project:**

N/A

**§ 1.1.6 Other Project Information"**

**(Identify special characteristics or needs of the Project not provided elsewhere, such as environmentally responsible design or historic preservation requirements.)**

**§ 1.1.7 PROJECT TEAM**

**§ 1.1.7.1 The Owner identifies the following representative in accordance with Section 5.3:  
(List name, address and other information.)**

Ronald Bowlan, Sr. Vice President, Facilities and Campus Planning

Tel: 215-503-4767

Email: [ron.bowlan@jefferson.edu](mailto:ron.bowlan@jefferson.edu)

Fax: 215-503-2436

Kim Dengler

Director, Facilities Design & Construction

Tel: 215-503-7715

Email: [kim.dengler@jefferson.edu](mailto:kim.dengler@jefferson.edu)

Fax: 215-503-2436

Thomas Jefferson University

Department of Facilities Design & Construction

130 South 9<sup>th</sup> Street

Suite # 2300  
Philadelphia, Pennsylvania 19107

§ 1.1.7.2 The persons or entities, in addition to the Owner's representative, who are required to review the Architect's submittals to the Owner are as follows:  
(List name, address and other information.)

§ 1.1.7.3 The Owner will retain the following consultants and contractors:  
(List discipline and, if known, identify them by name and address.)

Unknown at this time

§ 1.1.7.4 The Architect identifies the following representative in accordance with Section 2.3:  
(List name, address and other information.)

§ 1.1.7.5 The Architect will retain the consultants identified in Sections 1.1.7.6 and 1.1.7.7.  
(List discipline and, if known, identify them by name and address.)

§ 1.1.7.6 Consultants retained under Basic Services:

.1 Structural Engineer

.2 Mechanical Engineer:

.3 Electrical Engineer

.4 Construction cost Estimating

.5 Other (Please specify):

- 1.
- 2.
- 3.

§ 1.1.7.7 Consultants retained under Additional Services:

N/A

§ 1.1.8 Other Initial Information on which the Agreement is based:  
(Provide other Initial Information.)

N/A

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§ 2.4 Except with the Owner's knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project. The Architect shall not engage any consultant, contractor or subcontractor without first obtaining the Owner's prior written consent, which consent shall not be unreasonably withheld. In the event that the Architect breaches this provision, the Architect shall indemnify, defend and hold Owner harmless from all costs and expenses (including reasonable attorneys' fees and court costs) incurred by Owner as a result of any liens placed on any property of Owner by such contractor or subcontractor

§ 2.5 The Architect shall maintain the following insurance for the duration of this Agreement. If any of the requirements set forth below exceed the types and limits the Architect normally maintains, the Owner shall reimburse the Architect for any additional cost:  
(Identify types and limits of insurance coverage, and other insurance requirements applicable to the Agreement, if any.)  
**Architect's Insurance**

**Architect's Insurance** – Prior to the start of the Architect's services hereunder, the Architect shall procure and maintain in force during the term of the Agreement the following insurance written on an occurrence basis with insurance companies lawfully authorized to do business in Pennsylvania: workers' compensation insurance with statutory limits; employers' liability insurance in the amount of at least \$5,000,000.; business automobile liability insurance in the amount of at least \$2,000,000; and commercial general liability insurance, to include coverage for bodily injury and property damage liability, personal and advertising injury liability, products and completed operations, and contractual liability with minimum primary policy limits of \$1,000,000. per occurrence and a project specific annual aggregate of \$2,000,000. Architect will also maintain excess/umbrella commercial general liability insurance in minimum policy limits of \$500,000 per occurrence and \$5,000,000 in the annual aggregate. Architect will also maintain errors and omissions professional liability insurance with minimum limits of \$5,000,000 per occurrence and an annual aggregate of \$10,000,000 written on an occurrence or claims made basis. If the errors and omissions liability policy is written on a claim made basis, Architect agrees that upon termination of coverage, Architect shall procure and maintain in force a retroactive reporting policy (tail policy) for a minimum of ten (10) years following completion of the project. The errors and omissions policy referenced above shall not contain mold or pollution coverage exclusions. All insurance policies required to be carried by Architect shall be primary and

non-contributory). As the first name insured, Architect shall be responsible for any deductibles on the, general liability policy. Policy deductibles shall not be greater than \$20,000.

Thomas Jefferson University Hospitals will be an additional named insured on the policy. The policies of insurance required hereunder shall contain a provision that the coverage afforded under the policies shall not be cancelled or allowed to expire until at least thirty (30) days' prior written notice has been given to the Owner. At or preceding execution of this Agreement, the Architect shall furnish the Owner with the following insurance documents; certificates of insurance evidencing the required coverage to certificate holder. Thomas Jefferson University a schedule of underlying coverage on the excess/umbrella policy; and an endorsement adding Thomas Jefferson University, as an additional named insured on the primary and excess general liability policy.

.1 — General Liability

If Architect fails to obtain or maintain any insurance required by this Agreement, such failure shall constitute substantial failure to perform under Section 1,3,8,4 of this Agreement. In addition to an other remedies available to Owner due to such failure, Owner may, at Owner's option, purchase such coverage and deduct the expense from any fees due Architect.

.2 — Automobile Liability

.3 — Workers' Compensation

.4 — Professional Liability

Owner's Insurance. The Owner shall obtain and maintain all risk property insurance upon the Project for the full replacement cost at the time of loss.

**PAGE 6**

§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services. The schedule initially shall include anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if ~~necessary,~~necessary as the Project proceeds until the commencement of construction.

**PAGE 7**

§ 3.2.5.2 The Architect shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program and ~~aesthetics,~~aesthetics in developing a design for the Project that is consistent with the Owner's program, schedule and budget for the Cost of the Work.

...

§ 3.3.3 The Architect shall submit the Design Development ~~Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work,~~documents to the Owner and request the Owner's approval.

**PAGE 8**

§ 3.4.2 The Architect shall incorporate into the Construction Documents the design requirements of governmental authorities having jurisdiction over the Project. The Architect will assist the Owner in connection with the Owner's responsibility for filing documents required for approval of Landlord and governmental authorities having jurisdiction over the Project as applicable. In addition to providing the drawings, documents and plans described in Sections 3.2,

3.3 and 3.4 of this Agreement, the Architect will provide as a part of such drawings, documents and plans, or in a separate form, such plans as may be necessary to obtain all required governmental approvals from governmental authorities having jurisdiction over the Project.

...

§ 3.4.4 The Architect shall update the estimate for the Cost of the ~~Work.~~ Work.

...

The Architect shall assist the Owner in establishing a list of prospective contractors. Following the Owner's approval of the Construction Documents, the Architect shall assist the Owner in (1) obtaining either competitive bids or negotiated proposals; (2) confirming responsiveness of bids or proposals; (3) determining the successful bid or proposal, if any; and, (4) awarding and preparing contracts for construction. The Architect will assist the Owner in bid validation or proposal evaluation determination of the successful bid or proposal, if any; however, the final determination or acceptance shall be made by Owner in its sole discretion.

## PAGE 9

- .1 procuring the reproduction of Proposal Documents for distribution to prospective contractors, ~~and requesting their return upon completion of the negotiation process;~~

...

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A201™-2007, General Conditions of the Contract for ~~Construction.~~ Construction, as amended by Owner. If the Owner and Contractor modify AIA Document A201-2007, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement.

...

§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of ~~construction, or as otherwise required in Section 4.3.3, to become generally contractors' operations, or as otherwise agreed by the Owner and the Architect in Section 4.2.3,~~ (1) to become familiar with the progress and quality of the portion of the Work ~~completed, and to completed in the Project, and~~ (2) to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work.

§ 3.6.2.2 The Architect has the authority and responsibility to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees or other persons or entities performing portions of the Work.

§ 3.6.2.3 The Architect shall interpret and decide matters concerning performance under, ~~and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.~~ INTENTIONALLY DELETED.

§ 3.6.2.4 Interpretations and decisions of the Architect shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations



and decisions, the Architect shall endeavor to secure faithful performance by ~~both Owner and Contractor, the Contractor.~~ The Architect, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith. ~~The Architect's.~~ The Owner's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

~~§ 3.6.2.5 Unless the Owner and Contractor designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A201-2007, the Architect shall render initial decisions on Claims between the Owner and The Owner shall render initial decision of Claims from the Contractor as provided in the Contract Documents.~~

## PAGE 10

~~§ 3.6.3.1 The As requested by the Owner, the Architect shall review and certify the amounts due the Contractor and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Contractor's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality equality of the Work is in accordance with the Contract Documents. The foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the Contract Documents prior to completion, and (4) to specific qualifications expressed by the Architect.~~

~~§ 3.6.3.2 The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.~~ **INTENTIONALLY DELETED**

~~§ 3.6.3.3 The Architect shall maintain a record of the Applications and Certificates for Payment.~~ Payment.

...

~~§ 3.6.4.2 In accordance with the Architect approved approved submittal schedule, the Architect shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.~~

~~§ 3.6.4.3 If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review Shop Drawings shop drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor that bear such professional's seal and signature when submitted to the Architect. The Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals.~~

## PAGE 12

~~§ 4.3 Additional Services may be provided after execution of this Agreement, without invalidating the Agreement. Agreement, if mutually agreed in writing. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.3 shall entitle the Architect to compensation pursuant to Section 11.3 and Article 11 and an appropriate adjustment in the Architect's schedule.~~



§ 4.3.1 Upon recognizing the need to perform the following Additional Services, the Architect shall notify the ~~Owner~~ Owner, in writing, with reasonable promptness and explain the facts and circumstances giving rise to the ~~need-~~ proposed Additional Services. The Architect shall not proceed to provide the following services until the Architect receives the Owner's written ~~authorization-~~ authorization ("material" being defined to mean, in general, resulting in more than eight (8) hours of additional time by the Architect:

- .1 Services necessitated by a material change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project as defined in this Agreement and the Contract Documents including, but not limited to, size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method;
- .2 Services necessitated by the Owner's request (after the date of this Agreement) for extensive environmentally responsible design alternatives, such as unique system designs, in-depth material research, energy modeling, or LEED® certification;
- .3 Changing or editing previously prepared Instruments of Service necessitated by the enactment or revision of codes, laws or regulations or official ~~interpretations;~~ interpretations after the date of this Agreement;
- .4 Services necessitated by material failure of performance of decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;
- .5 ~~Preparing digital data for transmission to the Owner's consultants and contractors, or to other Owner authorized recipients;~~ **INTENTIONALLY DELETED**
- .6 ~~Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner;~~ **INTENTIONALLY DELETED**;
- ...
- .9 ~~Evaluation of the qualifications of bidders or persons providing proposals;~~ **INTENTIONALLY DELETED**
- .10 Consultation concerning replacement of Work resulting from fire or other cause during construction; ~~or (unless caused by Architect)~~
- .11 ~~Assistance to the Initial Decision Maker, if other than the Architect.~~

§ 4.3.2 To avoid delay in the Construction Phase, the Architect shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If the Owner subsequently determines that all or parts of those services are not required, the Owner shall give prompt written notice to the Architect, and the Owner shall have no further obligation to compensate the Architect for those services:

- .1 ~~Reviewing a Contractor's submittal out of sequence from the submittal schedule agreed to by the Architect;~~
- .2 ~~Responding to the Contractor's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner provided information, Contractor prepared coordination drawings, or prior Project correspondence or documentation;~~
- .3 ~~Preparing Change Orders and Construction Change Directives that require evaluation of Contractor's proposals and supporting data, or the preparation or revision of Instruments of Service;~~
- .4 ~~Evaluating an extensive number of Claims as the Initial Decision Maker;~~
- .5 ~~Evaluating substitutions proposed by the Owner or Contractor and making subsequent revisions to Instruments of Service resulting therefrom; or~~
- .6 ~~To the extent the Architect's Basic Services are affected, providing Construction Phase Services 60 days after (1) the date of Substantial Completion of the Work or (2) the anticipated date of Substantial Completion identified in Initial Information, whichever is earlier;~~ **INTENTIONALLY DELETED**

§ 4.3.3 The Architect shall provide Construction Phase Services exceeding the limits set forth below as Additional Services. When the limits below are reached, the Architect shall notify the Owner:

- .1 ~~( ) reviews of each Shop Drawing, Product Data item, sample and similar submittal of the Contractor~~
- .2 ~~( ) visits to the site by the Architect over the duration of the Project during construction~~
- .3 ~~( ) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents~~

~~4~~ ( ) inspections for any portion of the Work to determine final completion **INTENTIONALLY DELETED**

§ 4.3.4 If the services covered by this Agreement have not been completed within ( ) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services. **INTENTIONALLY DELETED**

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§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements. ~~Within 15 days~~ **Project** Within a reasonable time after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of or enforce lien rights.

§ 5.2 The Owner shall establish and may periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect. The Owner and the Architect shall thereafter ~~agree to discuss whether or not to make a corresponding change in the Project's scope and quality, and/or quality.~~

...

§ 5.4 The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark. **INTENTIONALLY DELETED.**

~~§ 5.5 The Owner shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.~~

#### **§ 5.5 INTENTIONALLY DELETED**

§ 5.7 ~~The~~ Unless otherwise provided in this Agreement, the Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials. Architect, to the extent customary and reasonable to do so, shall advise Owner, if any such tests, inspections or reports are required.

§ 5.8 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests. **INTENTIONALLY DELETED**

...

§ 5.10 Except as otherwise provided in this Agreement, or when direct communications have been specially authorized, the Owner shall endeavor to communicate with the Contractor and the Architect's consultants through the Architect about matters arising out of or relating to the Contract Documents. The Owner shall promptly notify the Architect of any direct communications that may affect the Architect's services. **INTENTIONALLY DELETED**

~~§ 5.11 Before executing the Contract for Construction, the Owner shall coordinate the Architect's duties and responsibilities set forth in the Contract for Construction with the Architect's services set forth in this Agreement. The Owner shall provide the Architect a copy of the executed agreement between the Owner and Contractor, including the General Conditions of the Contract for Construction. **INTENTIONALLY DELETED**~~

...

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include contractors' general conditions costs, overhead and profit. The Cost of the Work does not include the compensation of the Architect, the costs of the land, rights-of-way, financing, and contingencies for changes in the Work or other costs that are the responsibility of the Owner.

**PAGE 14**

§ 6.3 In preparing estimates of the Cost of the Work, the Architect shall be permitted to include contingencies for design, bidding and price escalation; to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents; to make reasonable adjustments in the program and scope of the Project; and to include in the Contract Documents ~~alternate~~ alternates bids as may be necessary to adjust the ~~estimated~~ estimate Cost of the Work to meet the Owner's budget for the Cost of the Work. ~~The Architect's estimate of the Cost of the Work shall be based on current area, volume or similar conceptual estimating techniques. If the Owner requests detailed cost estimating services, the Architect shall provide such services as an Additional Service under Article 4.~~

§ 6.4 ~~If the Bidding or Negotiation Phase has not commenced within 90 days after the Architect submits the Construction Documents to the Owner, through no fault of the Architect, the Owner's budget for the Cost of the Work shall be adjusted to reflect changes in the general level of prices in the applicable construction market. **INTENTIONALLY DELETED.**~~

§ 6.5 If at any time the ~~Architect's~~ Architect's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect shall make appropriate recommendations to the Owner to adjust the Project's size, ~~quality or budget for~~ scope, quality, budget, or other aspects affecting the Cost of the Work, and the Owner shall ~~cooperate with the Architect in making~~ make the adjustments, if any, that the Owner decides, in its discretion, are appropriate, and the Architect shall document such adjustments.

§ 6.6 If the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services is exceeded by the lowest bona fide bid or negotiated proposal, the Owner ~~shall~~ may take any of the following actions in the sole discretion:

...

§ 6.7 If the Owner chooses to proceed under Section 6.6.4, the Architect, ~~without additional compensation, shall~~ shall be compensated on a T & M basis, to modify the Construction Documents as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services, or the budget as adjusted under Section 6.6.1. The Architect's modification of the Construction Documents shall be the limit of the Architect's responsibility under this Article 6.

...

§ 7.1 ~~The Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project. If the Owner and Architect intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions.~~

§ 7.2 ~~The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and~~

other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants.

**§ 7.3** Upon execution of this Agreement, the Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under this Agreement. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate.

**§ 7.3.1** In the event the Owner uses the Instruments of Service without retaining the author of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.

**§ 7.4** Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

## **ARTICLE 7 COPYRIGHTS AND LICENSES**

**§ 7.1** The Architect and the Owner warrant that in transmitting the Instruments of Services, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use of the Project. Owner acknowledges that the Architect's Drawings, specifications and other documents, including those in electronic form, prepared by the Architect and the Architect's consultants are instruments of Service for use solely with respect to this project

**§ 7.2** The Owner acknowledges that the Architect and the Architect's consultants shall be deemed the authors of their respective Instruments of Services, including the Drawings and Specifications, and shall retain the copyrights therefor. Submission or distribution of Instruments of Service to meet official regulatory requirement or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect or the Architect's consultants. Nevertheless, the copies of the final Construction Documents prepared under this Agreement provided to Owner shall become the property of the Owner upon completion of the services and payment in full of all monies due to Architect or at such time as Architect is in default under this Agreement. Construction Documents shall include electronic specifications, as-builts from Owner supplied markup, AUTOCAD files, and an electronic copy of all submittals and sketches. The Owner may, at its sole risk, reuse or make modifications to the Construction Documents without the prior written consent of the Architect or the Architect's consultants. The Owner shall have the right to use Instruments of Service to prepare space plans, which shall be the sole property of the Owner.

**§ 7.3** Upon execution of this Agreement, the Architect grants to the Owner a nonexclusive license to use and reproduce the Architect's Instruments of Service solely for purposes of constructing, using, maintaining, altering and adding to the Project, and as further provided in the Article. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with the Agreement. The license granted under this Article permits the Owner to authorize the Contractors, Subcontractors, Sub-contractors and material or equipment suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service appropriate to and for use in performing services or construction for the Project. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purpose in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this



Section 7.2 shall terminate as to that portion (if any) of the Instruments of Service for which Owner has not paid Architect, unless such termination was due to Architect's default under this Agreement, at which point the Instrument of Service shall belong to Owner. Upon such termination (unless such termination was due to Architect's default), the Owner shall refrain from making further reproductions of Instruments of Service belonging to the Architect and shall return to the Architect within seven days of termination all originals and reproductions in the Owner's possession or control for which ownership has not passed to the Owner. The provisions of the Section 7.3 shall not apply to any portion of the Instruments of Service for which title has passed to Owner by reason of Owner's payment of sums due for such portion of the Instruments of Service. If and upon the date the Architect is in default of the Agreement, the foregoing license shall be deemed terminated and replaced by a second, nonexclusive license permitting the Owner to authorize other similarly credentialed design professionals to reproduce and, where permitted by law, to make changes, corrections or additions to the Instruments of Service solely for purposes of completing, using and maintaining the Project, including but not limited to future renovations of the Project.

#### **§ 7.3.1**

In the event the Owner uses the instrument of Service without retaining the author of the Instruments of Services, the Owner releases the Architect and the Architect's consultants(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including reasonable costs of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1, except to the extent that the use is performed by or for the Architect. The terms of this Section 7.3.1 shall not apply in the Owner rightfully terminates this Agreement for cause under Section 9.4.

§ 7.4 Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect, not to be unreasonably withheld, conditioned or delayed.

#### **§ 8.1 GENERAL INTENTIONALLY DELETED**

~~§ 8.1.1 The Owner and Architect shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement in accordance with the requirements of the method of binding dispute resolution selected in this Agreement within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 8.1.1.~~

~~§ 8.1.2 To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201-2007, General Conditions of the Contract for Construction. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.~~

~~§ 8.1.3 The Architect and Owner waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 9.7.~~

~~§ 8.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to~~

~~comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.~~INTENTIONALLY DELETED

~~§ 8.2.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.~~

~~§ 8.2.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.~~

~~§ 8.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the The method of binding dispute resolution shall be the following:~~

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[ ] ~~Other (Specify)~~  Other (See Below)

### § 8.3 ARBITRATIONDISPUTE MITIGATION AND RESOLUTION

1. WORK CONTINUANCE AND PAYMENT. Unless otherwise agreed in writing, Architect shall continue the Work and maintain the Schedule of the Work during any dispute mitigation or resolution discussions or proceedings. If Architect continues to perform, Owner shall continue to make payments in accordance with this Agreement.

2. DIRECT DISCUSSIONS. If the Parties cannot reach resolution on a matter relating to or arising out of this Agreement, the Parties shall endeavor to reach resolution through good faith direct discussions between the Parties' representatives, who shall possess the necessary authority to resolve such matter and who shall record the date of first discussions. If the Parties' representatives are not able to resolve such matter within seven (7) Days of the date of first discussion, the Parties' representatives shall immediately inform senior executives of the Parties in writing that resolution was not effected. Upon receipt of such notice, senior executives of the Parties shall meet within seven (7) Days to endeavor to reach resolution. If the dispute remains unresolved after fourteen (14) Days from the date of first discussions, the Parties shall submit such matter to the dispute mitigation and dispute resolution procedures selected herein.

3. BINDING DISPUTE RESOLUTION. If the matter remains unresolved following the discussions referenced in Subparagraph 2 above, the parties shall refer the matter to binding arbitration using the current Construction Industry Arbitration Rules of the American Arbitration Association ("AAA Rules"), except as revised below:

a. The venue of the binding dispute resolution procedure shall be the location of the Project, unless the parties agree otherwise.

b. All parties necessary to resolve the matter shall be parties to the same dispute resolution procedure. All contracts with Contractors, Subcontractors, Material Suppliers, designers and consultants shall incorporate by reference the binding dispute resolution provisions in this Agreement.

c. There shall be a single arbitrator, selected in accordance with the AAA Rules, and the costs shall be shared equally by the parties.

d. All documents relating to the dispute shall be voluntarily exchanged at the initial scheduling conference with the case manager of AAA.

e. There shall be no written discovery or motions, except by further agreement of the parties.

f. There shall be a maximum of three depositions on each side, and a limit of 6, for any proceeding.

g. Arbitration hearings shall be conducted on an expedited basis. The parties are invited to submit direct testimony by deposition transcript or affidavit. Arbitration hearing time shall be limited to 10 hours for each side of the dispute, except by further agreement of the parties.

h. The arbitrator shall be required to issue a report of award within 30 days of the closing of the arbitration hearing, and shall explain the reasons for the result.

i. The award of the arbitrator shall be unappealable and final for all purposes.

**4. COSTS.** Each Party shall bear its own costs and fees incurred in connection with the binding arbitration procedures including, without limitation, the fees and costs of its own attorneys and experts except that the cost of the arbitrators and any other costs relating to the arbitration benefiting both Parties shall be split equally between the Parties.

~~§ 8.3.1 If the parties have selected arbitration as the method for binding dispute resolution in this Agreement, any claim, dispute or other matter in question arising out of or related to this Agreement subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of this Agreement. A demand for arbitration shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the arbitration.~~

~~§ 8.3.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the claim, dispute or other matter in question would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the claim, dispute or other matter in question.~~

~~§ 8.3.2 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.~~

~~§ 8.3.3 The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.~~

#### **§ 8.3.4 CONSOLIDATION OR JOINDER**

~~§ 8.3.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).~~

~~§ 8.3.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.~~

~~§ 8.3.4.3 The Owner and Architect grant to any person or entity made a party to an arbitration conducted under this Section 8.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Architect under this Agreement.~~



§ 9.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, (unless such payments are being disputed in good faith by the Owner pursuant to a written notice to the Architect from the Owner issued within thirty (30) days of Architect's submission of an invoice for such payments) after thirty (30) days' written notice from the Architect, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give ~~seven~~ fourteen (14) days' written notice to the Owner before suspending services. In the event of a proper suspension of services, and provide further that the Architect is not in material default under the terms of this Agreement or any amendment thereto, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Architect shall be paid all sums due prior to suspension and any reasonable expenses incurred in the interruption and resumption of the Architect's services. The Architect's ~~fees~~ time schedule for the remaining services and the time schedules shall be equitably adjusted.

§ 9.2 If the Owner suspends the Project, for more than thirty (30) consecutive days, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, (unless such interruption was due to the Architect's default under this Agreement., the Architect shall be compensated for reasonable expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.3 If the Owner suspends the Project for more than 90 ~~cumulative~~ days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than seven days' written notice.

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§ 9.6 In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all Termination Expenses as defined in Section 9.7. plus an amount for the Architect's anticipated profit on the value of the contracted services for the phase of the Work terminated and not performed by the Architect, as mutually agreed to by the parties

§ 9.7 ~~Termination Expenses are in addition to compensation for the Architect's services and include expenses directly attributable to termination for which the Architect is not otherwise compensated, plus an amount for the Architect's anticipated profit on the value of the services not performed by the Architect.~~ **INTENTIONALLY DELETED.**

§ 9.8 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7 and Section ~~11.9.11.5.~~

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§ 10.1 This Agreement shall be governed by the law of the ~~place where the Project is located, except that if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 8.3-Commonwealth of Pennsylvania.~~

§ 10.2 ~~Terms~~ Unless otherwise defined herein, terms in this Agreement shall have the same meaning as those in AIA Document A201-2007, General Conditions of the Contract for ~~Construction-Construction, as amended by Owner, which shall included by reference the terms of the Thomas Jefferson University Project Manual, dated September 1, 2000, last revised November, 2003 (except that this Agreement conflicts with any term or condition therein).~~

...

§ 10.7 The Architect shall not have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. ~~The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project. materials without the Owner's prior~~

written consent which may be withheld in Owner's sole discretion. In no event shall Architect's materials include the Owner's confidential or proprietary information.

§ 10.8 If the Architect or Owner Architect agrees to keep confidential and not to disclose to any person of entity, except to Architect's employees, contractors, material suppliers, consultants and subcontractors (an only to the extent necessary to perform services or construction or provide materials solely and exclusively for the Project) and of Owner's confidential or proprietary information, know-how, discoveries, projection methods, and the like that may be disclosed to Architect or its consultants or which Architect may acquire in connection with the Work, When either party receives information specifically designated by the other party as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except to (1) its employees, (2) those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project, or (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information-information, each party shall promptly notify the other party to permit that party's legal objection.

...

*(Insert amount of, or basis for, compensation.)*

§ 11.2 For Additional Services designated in Section 4.1, the Owner shall compensate the Architect as follows: (Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)INTENTIONALLY DELETED

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Lump Sum or not to exceed based on time & hourly rates

§ 11.4 Compensation for Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus percent (—%), << >> percent (<< >>), or as otherwise stated below:below .

...

|                          |             |           |     |    |
|--------------------------|-------------|-----------|-----|----|
| Total Basic Compensation | one hundred | percent ( | 100 | %) |
|--------------------------|-------------|-----------|-----|----|

§ 11.6 When compensation is based on a percentage of the Cost of the Work and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions, in accordance with the schedule set forth in Section 11.5 based on (1) the lowest bona fide bid or negotiated proposal, or (2) if no such bid or proposal is received, the most recent estimate of the Cost of the Work for such portions of the Project. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.INTENTIONALLY DELETED.

...

.1 Transportation and authorized out-of-town travel and ~~subsistence~~; subsistence when previously authorized by Owner;

...

.9 All taxes levied on professional services and on reimbursable expenses;INTENTIONALLY DELETED;

...

.11 Other similar Project-related expenditures.

The parties agree in advance that in no event shall Reimbursable Expenses exceed **\$1,600, (One Thousand, Six Hundred Dollars)** without advance electronic or written approval of Owner.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus ~~percent (—%) of the expenses incurred-consultants.~~

#### **§ 11.9 COMPENSATION FOR USE OF ARCHITECT'S INSTRUMENTS OF SERVICE**

If the Owner terminates the Architect for its convenience under Section 9.5, or the Architect terminates this Agreement under Section 9.3, the Owner shall pay a licensing fee as compensation for the Owner's continued use of the Architect's Instruments of Service solely for purposes of completing, using and maintaining the Project as follows:

#### **INTENTIONALLY DELETED**

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§ 11.10.1 An initial payment of ~~(\$ — )~~ shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice. **INTENTIONALLY DELETED**

§ 11.10.2 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable ~~upon presentation of the Architect's invoice. Amounts unpaid (—) within forty-five (45) days of presentation of the Architect's invoice .together with all supporting back-up materials as may be reasonably requested by Owner. The Owner shall notify the Architect of disputed amounts within thirty (30) days of the receipt of Architect's invoice. Undisputed amounts unpaid Ninety ( 90 ) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.~~

...

~~%—6 % annum~~

§ 11.10.3 ~~The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect, or to offset sums requested by or paid to contractors for the cost of changes in the Work unless the Architect agrees or has been found liable for the amounts in a binding dispute resolution proceeding.~~

#### **INTENTIONALLY DELETED**

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#### **ARTICLE 12 — SPECIAL TERMS AND CONDITIONS**

Special terms and conditions that modify this Agreement are as follows:

§ 11.10.4.2 Simultaneously with the making of each payment to Architect under this Agreement, Architect will sign a release form approved by Owner waiving Architect's right to file any mechanic's lien, claim, or notice of its intention to file a mechanic's lien with respect to Work covered by such payment.

Architect agrees to execute such documents as are reasonably required by Owner to waive and relinquish Architect's right to file a mechanic's lien, claim, or notice of its intention to file a mechanic's lien in accordance with the laws of the Commonwealth of Pennsylvania.

If at any time there shall be evidence of any mechanic's lien having been filed by or through Architect or its consultants for which, if established, Owner or any party having interest in the Property or any interest therein, might be made liable, Owner, in addition to all rights it has under applicable laws to remove such lien, shall have the right to retain out of any payments then due, or thereafter becoming due, an amount sufficient to indemnify Owner for any such mechanic's lien until the same shall have been effectively terminated and discharged or bonded, as hereinafter set

forth. Architect shall within ten (10) days of notice of such lien, cause to be discharged and terminated any lien filed by any of its consultant, material men, suppliers, or laborers, or shall bond against the same by a bond satisfactory to Owner.

## **§ 12.1 NON-DISCRIMINATION/SEXUAL HARASSMENT CLAUSE**

During the term of the Agreement, Contractor agrees as follows:

**§ 12.1.1** In the hiring of any employee(s) for the manufacture of supplies, performance of work, or any other activity required under the contract or any subcontract, the Contractor, Subcontractor, or any person acting on behalf of the Contractor or Subcontractor shall not by reason of gender, race, creed, or color, discriminate against any citizen of the Commonwealth who is notified and available to perform the work to which the employment relates.

**§ 12.1.2** Neither the Contractor nor any Subcontractor nor any person on their behalf shall in any manner discriminate against or intimidate any employee involved in the manufacture or supplies, the performance of work, or any other activity required under the contract on account of gender, race, creed, or color.

**§ 12.1.3** Contractors and Subcontractors shall establish and maintain a written sexual harassment policy and shall inform their employees of this policy. The policy must contain a notice that sexual harassment will not be tolerated and employees who practice it will be disciplined.

**§ 12.1.4** Contractors shall not discriminate by reason of gender, race, creed, or color against an Subcontractor or Supplier who is qualified to perform the work to which the contracts related.

**§ 12.1.5** The Contractor or each Subcontractor shall furnish all necessary employment documents and records, and to permit access to their books, records, and accounts by the Contracting Agency and the Bureau of Contract Administration and Business Development, for purpose of investigation, to ascertain compliance with provisions of the Nondiscrimination/Sexual Harassment Clause. If the Contractor or any Subcontractor does not possess documents or records reflecting the necessary information requested, the Contractor or Subcontractor shall furnish such information or reports forms supplied by the Contracting Agency or the Bureau of Contract Administration Business Development.

**§ 12.1.6** The Contractor shall include the provisions of this Nondiscrimination/Sexual Harassment Clause in every Subcontract so that such provisions will be binding upon each Subcontractor.

**§ 12.1.7** The Commonwealth may cancel or terminate the contract and all money due or to become due under the contract may be forfeited for a violation of the terms and conditions of this Nondiscrimination/Sexual Harassment Clause. In additions, the Agency may proceed with debarment or suspension and may place the Contract in the Contractor Responsibility files.

## **§ 12.2 LABOR RELATIONS**

**§ 12.2.1** Architect shall furnish labor that will work in "Harmony" with all Other elements of labor employed o the Project and at the Worksite, whether pursuant to this Agreement of some other arrangement. "Harmony," as used in this Agreement, means the provision of labor that will not, either directly or indirectly, cause or give rise to any work disruptions, slow downs, picketing, stoppages, or any violence or harm to or directed at any person or property while performing any work, or activities incidental thereto at the Project or at the Worksite.

**§ 12.2.2** Architect will require every subcontractor and consultant to provide labor that will work in Harmony with all other elements of labor employed on the Project and at the Worksite, whether pursuant to this Agreement or some other arrangement, will include the commitments set forth in this provision in every subcontract and consultancy, and will require its subcontractors and consultants to include such commitments in its subcontracts, and sub-subcontracts, respectively, for any portion of the work under this Agreement.

§ 12.2.3 The commitments stated in this Paragraph are a material element of this Agreement. Failure by Architect or any of its subcontractors, consultants, or sub-subcontractors to comply with these commitments shall be a material breach of this Agreement may subject Architect to liability for all costs of expenses suffered by Owner, including attorneys' fees and costs and all other costs arising out of any dispute resolution proceeding incurred to resolve the breach or to enforce this commitment.

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David P. McQuaid, FACHE  
President  
Thomas Jefferson University Hospitals, Inc.

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## **Certification of Document's Authenticity**

**AIA® Document D401™ – 2003**

I, \_\_\_\_\_, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 08:30:20 on 04/30/2013 under Order No. 9875627340\_1 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document B101™ – 2007, Standard Form of Agreement Between Owner and Architect, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

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*(Signed)*

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*(Title)*

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*(Dated)*